## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

## FORDHAM HILL OWNERS CORPORATION Employer

and

Case 02-RC-098661

UNITED FEDERATION OF SPECIAL POLICE and SECURITY OFFICERS, INC.

Petitioner

## DECISION AND ORDER

On April 9, 2013, we issued an Order denying the Employer's Request for Review of the Regional Director's Decision and Direction of Election and also denying the Employers' request to hold this proceeding in abeyance. We stated that a decision would follow.

In its Request for Review, the Employer contends that the Regional Director's Decision and Direction of Election should be rescinded and the petition dismissed, or held in abeyance, because the Board and the Regional Director lack the authority to act in this matter. We find no merit in these contentions and accordingly find that the Employer has raised no substantial issues warranting review.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Specifically, the Employer contends that the Board lacks a quorum because the President's recess appointments are constitutionally invalid. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, we agree with the Regional Director that, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. 1, fn. 1 (2013).

We likewise reject the Employer's related contention that the Regional Director would lack authority to process representation petitions if the Board lacked a quorum. The Board's delegation of its decisional authority in representation cases to Regional Directors dates back to 1961 and has never been withdrawn. See 26 Fed. Reg. 3889 (May 4, 1961). Consistent with the 1961 Delegation, NLRB Regional Directors remain vested with the authority to conduct elections and certify their results, regardless of the Board's composition at any given moment. Furthermore, in *New Process Steel*, the Supreme Court expressly stated that such delegations were not affected by its decision, and, following that decision, no fewer than three courts of appeals have upheld the principle that Board delegations of authority to non-members remain valid during a loss of quorum by the Board. See *New Process Steel L.P. v. NLRB*, 130. S.Ct. 2635, 2643 n.4 (2010); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011); *Osthus* 

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

Dated, Washington, D.C., April 29, 2013.

v. Whitesell Corp., 639 F.3d 841, 844 (8th Cir. 2011); Overstreet v. El Paso Disposal, LP, 625 F.3d 844, 853 (5th Cir. 2010).